

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7575

Tariff filing of Washington Electric Cooperative,)
Inc. re: proposed rate design changes, to take)
effect December 11, 2009)

Order entered: 4/9/2010

PROTECTIVE ORDER REGARDING EXCEL SPREADSHEETS PREVIOUSLY FILED

I. INTRODUCTION

On January 19, 2010, Washington Electric Cooperative, Inc. ("WEC"), filed a Motion for Confidential Treatment of Electronic Spreadsheets Previously Filed. In its motion, WEC requests that the electronic version of its rate design and fully allocated cost of service study ("FACOS") be placed under seal and kept confidential. WEC asserts that the formulas embedded within the electronic Excel spreadsheets are trade secrets, which if disclosed to the public could cause economic harm to WEC's expert from LaCapra & Associates. However, WEC indicates that the files contain several pages that it may utilize as exhibits at the technical hearing— for example, the cost of service study, load research analysis, and cost allocations.

No other party opposed WEC's motion or filed comment.

II. DISCUSSION

I have reviewed the motion and supporting materials, and I conclude that WEC has made a *prima facie* showing that confidential treatment is warranted for the electronic spreadsheets filed by WEC on January 4, 2010, labeled "2007 WEC FACOS Study.xls" and "200 kWh Baseload Block_Marginal Cost Tail block. Rate Design.xls." Therefore, I hereby grant WEC's motion for a protective order.

To promote full public understanding of the basis for its decisions, the Public Service Board has actively taken steps to limit the amount of information subject to protective orders. The Board has encouraged parties to remove material from that protection to the extent possible.

Since 2001, the Board has required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.¹

Generally, however, the Board only resolves disputes about information when there is a genuine disagreement about its confidential nature.²

In determining whether to protect confidential information, the Board considers three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?³

WEC asserts that the models and formulas contained in the electronic spreadsheets satisfy the definition of a trade secret. WEC states that these formulas for computation, application, and allocation of cost and other data for ratemaking are not generally known by the public.

According to WEC, the models, developed by La Capra & Associates ("La Capra") through years of professionally-obtained knowledge and experience, offer La Capra a competitive advantage over other utility consultants who have not developed such formulas. WEC explains that public dissemination of the spreadsheets could allow competitors of La Capra to utilize the computations to obtain unfair competitive advantage. Because no party filed any comment or noted any disagreement with WEC's statements, I accept WEC's averment as true for purposes of its motion.

1. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket, No. 6545, ("*Entergy Docket*"), Order of 11/9/01 at 5-6.

2. *Id.* at 6.

3. *See, e.g., Entergy Docket*, Order of 3/29/02 at 2.

I have reviewed the motion and supporting materials, and I have applied the existing standard. I conclude that the electronic spreadsheets constitute commercial information that should be protected, that disclosure could cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting the information. Therefore, WEC has made a *prima facie* showing that confidential treatment is warranted for the information at issue, and I grant WEC's motion for a protective order.

In addition, the Board has consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. I expect WEC to do the same here. At this time, I am not explicitly ruling that any specific information should remain confidential indefinitely. Parties retain the ability to challenge whether information encompassed by this ruling should be removed from the special protections I adopt in this Order or removed completely from protection as confidential information.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by WEC (as described above) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of April 9, 2010, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

SO ORDERED.

Dated at Montpelier, Vermont, this 9th day of April, 2010.

s/Andrea C. McHugh

Andrea C. McHugh
Hearing Officer

OFFICE OF THE CLERK

FILED: April 9, 2010

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)